

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DERRICK RANKINE
Plaintiff

vs.

SUPER. SOBINA, et al,
Defendants.

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C.A. No. 03-313 Erie
District Judge McLaughlin
Magistrate Judge Baxter

ORDER

AND NOW, this 1st day of August, 2005;

IT IS HEREBY ORDERED that Defendants' motion to dismiss the original and first amended complaint [Document # 50] is DISMISSED without prejudice. Plaintiff has filed a premature appeal to the United States Court of Appeals for the Third Circuit, and as parts of the case file have been shipped to Philadelphia for the appeal, this Court cannot verify at this time whether to treat Defendants' filing as a partial motion to dismiss, it appearing that not all of the claims and/or parties have been addressed therein.

IT IS FURTHER ORDERED that Defendants will have twenty days from the return of the case file to this District Court within which to refile a motion to dismiss or file an answer or motion for summary judgment which fully addresses all of the claims of the original and amended complaints. By Report and Recommendation issued this day, this Court recommends that the second amended complaint be dismissed for failure to prosecute as Plaintiff has not served such on either the original Defendants or on the new Defendants and has not shown good cause for his failure in this regard.

IT IS FURTHER ORDERED that the parties are allowed ten (10) days from this date to appeal this order to a district judge pursuant to Local Rule 72.1.3 B. Failure to appeal within ten (10) days may constitute waiver of the right to appeal.

S/ Susan Paradise Baxter
SUSAN PARADISE BAXTER
CHIEF UNITED STATES MAGISTRATE JUDGE